



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,490	12/10/2004	Iwao Yamazaki	04173.0461-00000	5583

22852 7590 07/30/2007
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

APANIUS, MICHAEL

ART UNIT	PAPER NUMBER
----------	--------------

3736

MAIL DATE	DELIVERY MODE
-----------	---------------

07/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary

Application No.

10/517,490

Applicant(s)

YAMAZAKI ET AL.

Examiner

Michael Apanius

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the Request for Reconsideration filed on 4/23/2007.

Claim Objections

2. Claims 1-3, 5 and 6 are objected to because of the following informalities:
 - a. At claim 1, line 2, it appears that "the quantities of the bone, the water and/or the muscles of the body" should simply be --quantities of bone, water and/or muscles of the body --.
 - b. At claim 1, line 4, it appears that "a plurality of electrodes in contact to the surface of the body" should be --a plurality of electrodes adapted to contact the surface of the body--.
 - c. At claim 1, line 13, "which" should be specifically refer to the somatotypes.
 - d. At claim 2, line 3, it appears that "include" should be --includes--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3736

4. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. At claim 1, line 7, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

6. At claim 1, lines 10-11, "means for calculating each approximate value of bone weight, water weight, and/or muscular weight of the body" is stated. It is unclear if the claim requires an approximate value for bone weight, an approximate value for water weight and an approximate value for muscular weight or if the claim only requires calculating one of these approximate values. Although the claim states calculating **each** approximate value, the claim also states calculating an approximate value for bone weight, water weight **or** muscular weight, implying that only one approximate value is needed. Claim 1, line 2 should also be clarified since "and/or" is stated. Claim 1, line 14 should also be clarified since "the approximate values" is stated.

7. At claim 1, line 14, "the correlations" appears to lack proper antecedent basis in the claim.

8. At claim 3, line 5, it is unclear to which previous limitation "and said personal information" is related.

9. At claim 3, last line, "the data" appears to lack proper antecedent basis in the claim.

10. At claim 3, last line, it is unclear if "a display" is the same or different display as recited in claim 1.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimomura (US 6,539,310) in view of Petrucelli et al. (US 6,292,690).

13. Shimomura discloses a display equipment for displaying the characteristics of a body including the quantities of the bone, the water and/or the muscles of the body, the display equipment comprising:

a plurality of electrodes (21a,b and 22a,b) for contacting the surface of the body;

means for measuring (23, 24) the impedance of the body by feeding a measuring current through said plurality of electrodes into the body;

means for putting personal information (41) into the display equipment;

means for calculating (45) the approximate value of muscular weight (column 5, lines 58-63) of the body on the basis of the measured impedance and said personal information;

means for judging the somatotypes of the body, which are classified on the basis of correlations between approximate values as calculated and body weight (see at least figures 5-7); and

a display (42) for indicating the somatotype as judged by said judging means (see at least figure 10).

14. In regards to claim 2, the personal information includes sex and age (column 4, lines 56-61). In regards to claim 3, the display equipment further includes memory (44) and a display of indicating sequentially the data as calculated (column 7, lines 6-8). In regards to claims 5 and 6, the equipment feeds a pulsed current (column 5, lines 10-15) through said electrodes into the body, so as to treat the body.

15. However, Shimomura does not expressly disclose that a belt includes the electrodes. Petrucelli teaches using a belt with electrodes instead of electrodes on a scale (column 8, lines 2-5) for use in a body impedance measurement apparatus. Petrucelli teaches that these means for contacting electrodes to the body are known alternatives. It is well known and routine in the art to substitute alternative elements. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have used a belt as taught by Petrucelli in the equipment of Shimomura because it is routine in the art to substitute alternative, known means for contacting impedance electrodes to the body.

Response to Arguments

16. Applicant's arguments with respect to the prior art rejections set forth in the Office Action of 1/22/2007 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant previously argued in the response filed on 12/8/2006 that Shimomura calculates an approximate value of LMI but does not calculate an approximate value of muscular weight of the body as required in claim 1. In response, Shimomura states that "LMI may be treated as an index of the muscular tissue since generally the lean tissue is mostly consisting of the muscular tissue" (column 8, lines 57-59). Shimomura determines a lean mass (column 5, lines 58-60). Since lean mass mostly consists of muscular tissue and since Shimomura discloses using lean mass as an index of muscular tissue, it is reasonable to conclude that the lean mass determined by Shimomura is sufficient to read on an "approximate value of muscular weight of the body" as required by claim 1.

Conclusion

18. Applicant's amendment filed 12/8/2006 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

Art Unit: 3736

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Apanius whose telephone number is (571) 272-5537. The examiner can normally be reached on Mon-Fri 8am-4:30pm.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA


MARK E. LINDENBURG
SENIOR PATENT EXAMINER
TECHNOLOGY CENTER 3700